

LARRY R. DAVIDSON

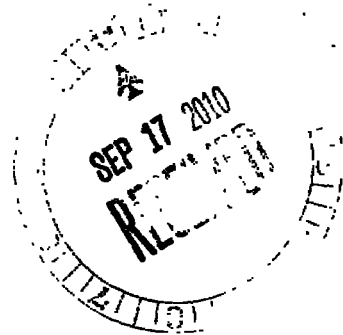
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September 16, 2010

Attn: Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, D.C. 20423-0001



Re: Portland & Western Railroad, Inc. – Petition for Declaratory Order –
Certain Rates & Practices as Applied to R K Storage & Warehousing, Inc.

STB Docket No. FD35406

927814

Dear Chief:

Enclosed is R K Storage & Warehousing, Inc.'s Motion for Extension of Time to File Reply, together with 10 copies of the Motion.

Thank you for your attention to this matter. Please contact me by email or telephone if you have any questions.

Sincerely,

Larry R. Davidson

Enclosures

cc: P. Campbell Ford
Timothy Coleman

ENTERED
Office of Proceedings

SEP 17 2010

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Public Record



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD35406

**PORTLAND & WESTERN RAILROAD, INC. – PETITION FOR
DECLARATORY ORDER – CERTAIN RATES AND PRACTICES AS APPLIED
TO RK STORAGE & WAREHOUSING, INC.**

**MOTION FOR EXTENSION OF TIME TO FILE REPLY
SUBMITTED ON BEHALF OF R K STORAGE & WAREHOUSING, INC.**

BY

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Pursuant to 49 CFR § 1104.7(b), R K Storage & Warehousing, Inc. ("R K") moves this the Surface Transportation Board ("STB") for a order granting R K a two month extension of time in which to file a reply to the Petition for Declaratory Order – Certain Rates and Practices As Applied to R K Storage & Warehousing, Inc. ("Petition"), filed by Portland & Western Railroad, Inc. ("PNWR").

The extension is needed primarily for two reasons, namely (1) to review and respond to the 875 pages of materials contained in PNWR's petition and (2) to allow time for discovery.

Prior to the filing of this Motion, undersigned counsel contacted lead counsel for PNWR who agreed to only a 20 day extension, which is inadequate for the reasons discussed below. Counsel for PNWR also confirmed that P & W, which failed and refused to produce a single document pursuant to R K's prior requests for production of documents while the case was pending in circuit court, continues its longstanding objection to responding to any discovery requests from R K, stating that PNWR's petition contains all pertinent documents.

**EXTENSIVE DOCUMENT REVIEW REQUIRES
ALLOWANCE OF ADDITIONAL TIME FOR REVIEW**

1. PNWR's Petition was filed on September 8, 2010. The current deadline for R K to file its reply is September 28, 2010.
2. The gravamen of the underlying controversy is R K's alleged liability for demurrages, due to R K's alleged failure to release rail cars back before the expiration of the free time allowed by PNWR's tariffs.
3. For the most part, R K disputes these charges. R K does acknowledge that R K is responsible for the payment of a small portion of the demurrage charges, probably less than two percent, and will identify those charges in its reply.
4. The Order referring this matter to this Board was signed on February 18, 2010, (Petition, Exhibit 7) which means that it took PNWR approximately 8.5 months to prepare and file its petition. It would be unreasonable and unjustified to allow R K less than 10 % of the time consumed by PNWR to respond to such an extensive petition.
5. R K's resources are much more modest than those of the PNWR, and R K's business would be severely impacted if it is required to divert attention from its daily business operations and devote a huge percentage of time to the task of responding to P & W' petition. PNWR is aware of that fact, stating that R K has the smallest track of all of PNWR's customers. (Petition, Affidavit of Todd Vincent, Exhibit A-6, p. 189, par. 21). PNWR itself is focused on efficient operations, and does not want to stop its efficient rail service. (Ex. A-6, par. 21). No less should be expected of the folks at R K.
6. In the interest of full disclosure at this time, R K will not be asserting a claim for storage charges. That claim was asserted in circuit court due to PNWR's practices, heavy

handedness and attitude in its dealings with R K, including PNWR's failure to remove some railcars from R K's spur on a timely basis which caused R K some inconvenience. The focus will instead be kept on PNWR's conduct in spotting and switching cars for R K.

7. Additionally, R K is unable to respond to PNWR's petition until R K has been furnished with additional documents by P & W, as discussed below.

DISCOVERY

8. Since this is not a discovery motion, R K will refrain at this time from addressing certain discovery issues. Instead, R K will limit its comments to matters demonstrating the need for additional time to file a responsive pleading to PNWR's petition, and will reference only documents which are included in PNWR's petition.

9. R K first requested documents from PNWR more than three years ago. (Petition, Exhibit 5, p. 106.) Not a single document was produced by PNWR.

10. After the complaint was filed in circuit court, R K again requested documents from P & W. (Petition, Exhibit 5, p. 104). Again, not a single document was produced by PNWR.

11. Pursuant to 49 CFR § 1114.28, R K intends to send PNWR discovery requests. Although the PNWR petition contains some responsive documents, it does not contain all of the documents sought by R K and which are discoverable, e.g. the identity of witnesses, all documents received by PNWR from R K, which go to the heart of this dispute.

12. PNWR has furnished the names of some, but not all, of the persons with knowledge regarding this matter. PNWR has also produced some, but not all, of copies of documents furnished sent by R K to PNWR during the time period in issue.

13. Discovery has taken on new importance, given new allegations raised for the first time by PNWR in its petition, e.g. defective track allegedly maintained by R K.


SUMMARY

PNWR required 8.5 months to prepare its petition. R K needs at least 2 months to prepare its reply.

VERIFICATION

I, Larry R. Davidson, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this motion.

Executed on September 16, 2010.


Larry R. Davidson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Extension of Time to File Reply has been furnished to Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, D.C. 20423-0001, via Federal Express, P. Campbell Ford, Ford, Miller and Wainer, P.A. (lead counsel for PNWR), 1835 N. Third Street, Jacksonville Beach, Florida 32250 via Federal Express, and Timothy Coleman (local counsel for P & W), 805 SW Broadway, 8th Floor, Portland, Oregon 97205 via first class mail, postage prepaid, on this 16th day of September, 2010.



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